Boston College Law Review

Volume 1 | Issue 2 Article 24

4-1-1960

Bankruptcy—Summary Jurisdiction Rights of Transferees.—Kohn v. Myers & Teleprompter Corp.

Anthony R. Dipietro

On the facts of the principal case, relief would have been afforded in "enlightened" Sales Act states and in UCC states. In this area there appears to be a common thread or jurisprudential theme running through the modern decisions, whether under the common law, USA, or UCC. Many reasons such as public policy, public interest, difficulty of proving negligence, etc., are given to sustain liability for breach of warranty in the absence of privity, whereas, in reality, "fairness" seems to be the underlying conception. Ultimate consumers are entitled to maximum protection from defective products, and the party usually best able to absorb the risk of loss and insurance coverage is the manufacturer or producer through cost diversification. In order to obtain equitable results many courts are forced to adopt fictions such as that "warranties run with the goods" or that "consumers are third party beneficiaries." Perhaps such rationalizations are necessary in jurisdictions which impose liability upon a manufacturer only in a tort action, since allegations of negligence are difficult to prove even by invoking res ipsa loquitur. Regardless of the reasons which a particular court uses to establish liability, it is submitted that in the interests of fairness and necessity, a wider class of persons than purchasers should be afforded protection from defective products. The Uniform Commercial Code has made a positive step in the right direction.

BRUCE N. SACHAR

Bankruptcy—Summary Jurisdiction—Rights of Transferees—*Kohn v. Myers & Teleprompter Corp.*[1]—Subsequent to the filing of a final amended petition, but prior to the final bankruptcy adjudication, a competitor and his attorney purchased from the bankrupt certain of his accounts receivable. Thereafter the plaintiff, the trustee in bankruptcy, sought to set aside the transfers under § 70d(1) and (5) of the Bankruptcy Act.[2] The referee in bankruptcy having decided that the bankruptcy court had summary jurisdiction of the controversy, issued an order requiring the defendants to turn over all monies collected from the accounts receivable and to reassign to the trustee the uncollected accounts. Upon the defendants' petition for review, the district court affirmed the referee's order both as to summary jurisdiction and the propriety of the turnover order.[3]

On appeal the United States Court of Appeals for the Sixth Circuit held that all the assets in the actual or constructive ownership of the bankrupt at the filing of the initial petition are subject to summary jurisdiction.[4] Also the defendants did not come under the statutory exception which permits one having a reasonable belief that the petition is not well founded to deal with the bankrupt.

---

1 266 F.2d 353 (2d Cir. 1959).

2 Bankruptcy Act § 70d, 52 Stat. 879 as amended, 11 U.S.C. § 110d (1958).

3 In The Matter of Autocue Sales and Distributing Corp., 162 F. Supp. 17 (S.D.N.Y. 1958).

4 The court summarily dismissed this point on page 355 of the opinion.

The court's decision upholding the exercise of summary jurisdiction by the bankruptcy court in situations involving litigation concerning property in the actual or constructive possession of the bankrupt at the time the petition is filed, is well founded.[5] The filing of the petition brings all the assets in the hands of the bankrupt within the custody of the court. If the question of possession at the date of bankruptcy is raised then a property claimant may be entitled, in limited situations, to have his interest adjudicated in a plenary suit.[6] The bankrupt, being the legal owner of the choses-in-action up to the time of the filing of the petition, had sufficient possession to support the district court's summary jurisdiction.[7]

The more important aspect of the case was the court's interpretation of § 70d(3) of the Bankruptcy Act.[8] The defendants were not protected under § 70d(1) even though they had paid fair consideration for the choses-in-action, because they had knowledge of the pending petition.[9] However under § 70d(3) a transferee having actual knowledge of a pending petition is protected when he has "reasonable cause" for believing that the petition is unsound.[10] This case is the first that has been found where a court has been expressly called upon to judicially interpret this section. In holding that merely because the involuntary petition was twice amended the transferees did not have reasonable cause for believing it to be unsound, the court accepted the belief expressed by commentators that this statutory exception would apply only in unusual circumstances.[11]

By its decision the court has prevented the utilization of § 70d(3) as an instrument to circumvent the protection given to the bankrupt estate. Unless the exception was sharply limited it could easily be manipulated to drain the assets from the bankrupt and thereby prevent the trustee from advantageously disposing of the bankrupt's property. The result of the court's holding that the policy of the statute places a rigid and absolute ban on all transfers made after the filing of the initial petition but prior to the final adjudication, and also that under the statutory exception the transferee must sustain the burden of proof as to the reasonableness of his belief that the

[5] Inter-State Nat'l Bank of Kansas City v. Luther, 221 F.2d 382 (10th Cir. 1955); Solomon v. Allied Building Credits, Inc., 209 F.2d 382 (10th Cir. 1955); Bradley v. St. Louis Terminal Warehouse Co., 189 F.2d 818 (8th Cir. 1951).

[6] See MacLachlan, Bankruptcy 206 (1956). Collier, Bankruptcy Manual ¶ 70.34 (2d ed. Edelman 1954).

[7] In Re Worrall 79 F.2d 88, 90 (2d Cir. 1935); In Re Borok 50 F.2d 75 (2d Cir. 1931).

[8] See note 2 supra.

[9] The opinion made it clear that if transfers for a fair equivalent value were permitted after the filing of the initial petition the protection offered by the statute would be nullified. Also by way of dictum the court summarily dismissed any potential arguments that the transfer was valid because there was no fraud or because the bankrupt's estate had actually benefited from the transaction.

[10] In its opinion the court interpreted § 70d(3) as raising a "conclusive presumption or substantive rule of law" that the acquisition of the bankrupt's assets after a petition in bankruptcy is not in good faith if the transferee had knowledge of the pending petition and did not have reasonable cause to believe that it was not well founded.

[11] Collier, Bankruptcy Manual ¶ 70.34 (2d ed. Edelman 1954).

petition is unsound cannot be questioned. Thus the interpretation of the Bankruptcy Act requiring an objectively substantial basis for application seems appropriate to further the protection provided by the Act.

ANTHONY R. DIPIETRO

Banks—Holder for Value—Collection Agreement.—***Pike v. First Nat'l Bank.***[1]—The plaintiff collecting bank sued the drawer on two checks totaling $2,300.00, drawn in payment of two automobiles sold to the drawer. The payee, Auto Auction, endorsed the checks to J. C. Andrews Motor Co., from whom the cars had been received for sale. Andrews in turn endorsed them "for deposit only" and deposited them to his account with the plaintiff bank. Subsequently on the day of deposit, he drew against his account leaving a balance of only $66.44 therein. Five days later defendant drawer, learning of an outstanding lien against the automobiles, effectively stopped payment on the checks. In the lower court, a verdict was directed in favor of the bank, and the drawer appealed. The Court of Appeals of Georgia affirmed, holding: regardless of whether initially an express deposit agreement between depositor and the collecting bank created merely a principal agent relation, where the depositor, pursuant to the bank's custom, withdrew substantially the entire proceeds of deposited checks prior to collection and before notice of their infirmity, the bank thereby gave value and became a holder in due course as to the amount withdrawn with the right to enforce payment against the drawer.

The question presented by this case was whether the collecting bank was a holder[2] for value[3] with respect to the checks or only a collection agent for the depositor, in the course of which relation it merely loaned its depositor the value of the checks. If the bank were the latter, any defense of the drawer, such as failure of consideration as in this case, good against the depositor could be successfully urged in a suit brought by the depositor's agent, the collecting bank.[4] As a holder for value, however, the bank would be free from defenses that would be available to the prior parties among themselves.[5]

It is generally held that a check deposited merely for collection does not transfer title, for the collecting bank undertakes to act only as an agent for collection and not as a purchaser.[6] Even when the check is credited to the account of the depositor, but there is no right of withdrawal nor is any money advanced, most American courts hold that the check is still presumed to have been deposited for collection only, and the credit made in anticipa-

---

[1] 99 Ga. App. 598, 109 S.E.2d 620 (2d Div. 1959).

[2] NIL § 52; UCC § 3-302(1)(4).

[3] NIL § 25, 26, 27, 54; UCC § 3-303(a).

[4] NIL §§ 28, 58; UCC § 3-306(b)(c).

[5] NIL § 57; UCC § 3-305.

[6] Freeman v. Exchange Bank, 87 Ga. 45, 13 S.E. 160 (1891); Fourth Nat'l Bank v. Mayer, 89 Ga. 108, 14 S.E. 891 (1892).